

SUBSTANCE OF THE INTERVIEW

The Examiner conducted an applicant initiated interview on November 10, 2005 beginning at 2 PM. Attending the interview were Examiner David Comstock, inventor Catherine Drogin and Applicants' representative Michael Kurzer.

A. Brief Description of the Nature of Exhibits Shown or Demonstrated

Applicants demonstrated the use of a standard size tongue depressor self-illuminating handle attachment with a popsicle stick, a junior size tongue depressor and an adult size tongue depressor.

B. Claims Discussed

Applicants and Examiner generally discussed pending claims 1-6 & 8-18, however the discussion focused on independent claims 1, 12, 17, and 18. Applicants showed Examiner a possible new claim 19 directed to a method for examining a patient.

C. Prior Art Discussed

Applicants and Examiner discussed US Patent No. 5,946,773 to Esker et al., US Patent No. 910,914 to Daly et al., and US Patent Application Pub. No. 2004/0109932 to Chen et al.

D. Proposed Amendments of a Substantive Nature Discussed

Applicants and Examiner discussed possible amendments to further define the specific size and shape of the device. Applicants also showed Examiner a possible claim for a method of examining a patient. Examiner suggested that amendments should limit the claims to not cover a frozen confection handle sized tongue depressor, and to be specific enough to not cover the fork-like appearance of Daly et al..

E. Principal Arguments

Applicants argued that the all three prior art references do not teach or suggest a use as a

tongue depressor. Applicants further argued that the limitation of a standard size tongue depressor for use with the self-illuminating handle attachment should limit claims to not cover a food product handle as in Esker et al. or a fork-like device as in Daly et al., because such devices are not a standard size for use with the self-illuminating handle attachment. Applicants argued that the devices disclosed in Esker et al. and Daly et al. would not be suitable for conducting a patient examination because they will not fit properly in the self-illuminating holder attachment and further are not the right size for conducting an examination even without the holder attachment. Examiner stated that, while it would not be optimal to use these devices as tongue depressors, the devices *could* be used as tongue depressors. Examiner indicated that the references need not teach or suggest use as a tongue depressor, but must only meet the structure disclosed in the claims to form an anticipation rejection.

Applicants argued that there was no suggestion or motivation to make the food product handle of Esker et al. in the size of a tongue depressor and that there are specific reasons for the size and shape of a tongue depressor. Examiner argued that such a change in size would likely be obvious, but that he would need to further consider whether a second reference would be necessary to make this rejection.

Applicants argued that it would not be obvious to place an ornamental image on a tongue depressor as disclosed in Chen et al. The Examiner was inclined to think that placing an ornamental image on a tongue depressor would be obvious absent some convincing evidence of secondary considerations.

F. Other Pertinent Matters Discussed

Examiner indicated that the Patent Office did not receive a power of attorney for Michael Kurzer or the firm of Milbank, Tweed, Hadley & McCloy LLP. Applicants indicated that a

power of attorney will be submitted with the response.

G. General Results or Outcome of Interview

The interview concluded without an allowance. The Examiner indicated that adding amendments to define the specific size and shape of the device would likely overcome all 35 U.S.C. §102 rejections and likely any 35 U.S.C. §103 rejections involving Daly et al. The Examiner asked Applicants to present evidence to support a conclusion of nonobviousness with respect to modifying a craft stick or frozen confection handle to be of a generally larger size and with respect to adding a decorative design to a prior art tongue depressor.